



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
KATHRYNE BEYNON, DECEASED)

For' Appellant: Robert D. Bannon
 Attorney at Law

For Respondent: Crawford H. Thomas
 Chief Counsel

Gary M. Jerri
Counsel

OPINION

This appeal is made pursuant to section 18594 of the Revenue and Taxation Code from the action of the Franchise Tax Board on the protest of Kathryn Beynon, Deceased, against a proposed assessment of additional personal income tax in the amount of \$1,600.00 for the year **1968**.

Appeal of Kathrynne Beynon, Deceased

In 1945 appellant Kathrynne Beynon acquired some farm land in the Tulare Lake Basin. The basin is a reclaimed lake bed, and several mountain-snow runoff streams flow into it. The water from these streams is removed by pumping, or allowed either to settle into the soil or to evaporate. Since the lowest natural outlet is nearly thirty feet above the floor of the basin, however, severe floods periodically occur in years when the runoff is unusually heavy. Appellant's property was in fact flooded continuously from 1937 to 1947, again in 1953, and once more from January 1969 until December 1970.

Appellant's land was farmed by a tenant. It is claimed that its market value was depressed during the last flood, because no one knew how long it would remain under water. The land was not permanently damaged, however, and since the flood ended the tenant has been able to grow the same crops as he had previously!

Appellant filed, an amended California personal income tax return for the year in question in order to claim a flood loss deduction under Revenue and Taxation Code section 17206.5 for 1968. Respondent at first accepted the amended return and refunded \$1,600.00 to her, but later determined that she had not sustained a deductible loss. It accordingly issued the proposed assessment which occasioned this appeal.

Revenue and Taxation Code section 17206 grants a deduction for "any loss sustained during the taxable year and not compensated for by insurance or otherwise. " The regulations issued thereunder provide that the loss is deductible only if evidenced by a closed and completed transaction, fixed by identifiable events. (Cal. Admin. Code, tit. 18, reg. 17206(a), subd. (2).) Appellant claims that she suffered a deductible economic loss from the flood because the market value of her farm was depressed while the land was under water. For the reasons expressed below, we disagree.

The above mentioned California statute and regulation are substantially similar to their federal counterparts. (Int. Rev. Code of 1954, § 165; Treas. Reg. § 1.165-1(b).') Federal court decisions construing the federal statute, while not conclusive,

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are thus entitled to great weight in applying the state provisions. (Meanley v. McColgan, 49 Cal. App. 2d 203, 209 [121 P. 2d 45]; Appeal of Glenn M. and Phyllis R. Pfau, Cal. St. Bd. of Equal. , July 31, 1972.) The federal authorities hold uniformly that a taxpayer does not sustain a deductible loss merely because the market value of his property decreases. (J. G. Boswell Company v. Commissioner, 302 F. 2d 682, 685-686; Clarence A. Peterson, 30 T. C. 660 665.) While such a decrease may be a loss in the economic sense, the loss is not "sustained" for tax purposes until it is fixed by some identifiable event, such as permanent physical damage to the property, or its sale or permanent abandonment. (Citizens Bank of Weston, 28 T. C. 717, 721, aff'd, 252 F. 2d 425.)

Appellant's sole contention is that these federal authorities were wrongly decided because they conflict with Ferguson v. Commissioner, 59 F. 2d 893. We find no such conflict. While the opinion of the Court of Appeals in Ferguson does not fully set forth the facts upon which the decision was based, the opinion of the Board of Tax Appeals makes it clear that the land there in question had suffered actual physical damage, resulting in a loss measured by a decrease in market value. (23 B. T. A. 364, 366-367.) The Court of Appeals held only that such damage closed the transaction so that the loss was deductible. (59 F. 2d at 894.) It did not hold that a temporary decrease in market value was itself a deductible loss.

In the instant case, appellant's farm did not suffer any actual physical damage, and after the flood it was used to grow the same crops as before. Since no other event occurred to close the transaction and fix the loss, appellant has not sustained a deductible loss. (J. G. Boswell Company v. Commissioner, supra.)

ORDER

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

Anneal of Kathrvne Beynon, Deceased

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 18595 of the Revenue and Taxation Code, that the action of the Franchise Tax Board on the protest of Kathryne Beynon, Deceased, against a proposed assessment of additional personal income tax in the amount of \$1,600.00 for the year 1968, be and the same is hereby sustained.

Done at Sacramento; California, this 22nd day of April, 1975, by the State Board of Equalization.

William W. Ferguson, Chairman
George K. Hume, Member
Robert C. Hume, Member
_____, Member
_____, Member

ATTEST W. W. Hume, Secretary